

In The United States District Court
For The Western District of Michigan
(Northern Division)

Norwood Witherspoon.
Devonte Dorsey.
Michael Kelly.
Demetric Thompkins.
Jabari Regains.
Christopher Taylor.
Raymond Williams.

Plaintiffs

v

Jaylen McCoy.
Keith Thomas.
Antonio Taylor.
Anthony Wallace.
Larry M Stovall.
Oliver Webb

Civil Action

Complaint & Jury
Demand

FILED - MQ

March 2, 2021 9:56 AM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: slk SCANNED BY: M. 3-2-21

Correctional Officer - Unknown Vinder
Correctional Officer - Unknown Binner
Correctional Officer - Unknown Lamentola
Correctional Officer - Unknown Miller
Correctional Officer - Unknown Sgt. Whitlar
Correctional Officer - Unknown Sgt. Bemister
Erica Huss, Warden

Defendants

2:21-cv-40

Robert J. Jonker - Chief U.S. District Judge
Maarten Vermaat - Magistrate Judge

Civil Complaint :

Jurisdiction:

This is a Civil Action pursuant to 42 U.S.C. § 1983. Thus jurisdiction and venue is proper for this Court, pursuant to the following: 28 U.S.C. § 1331 and 1333(a)(3).

Previous Lawsuits:

This action is brought by multiple Inmates, to which some have filed lawsuits with the Federal Court, while some have not. Further, some Inmates have cases pending in mediation. However, no Inmates has any actions pending against the Defendants in this case, either State or Federal.

Place of Current Confinement:

All Inmates in this action are currently confined at:

Marquette Branch Prison
1960 US Highway 41. South
Marquette, Michigan 49855

Parties:

Plaintiffs:

Are listed above on the previous page. However, this action is for all those similarly situated at Marquette Branch Prison "C" Block in Segregation between October 19th through the 30th of 2020. Who were diagnosed with Covid-19 Virus.

Defendants:

Defendants are being sued in their individual Capacities only: And currently work for the Michigan Department of Corrections at the Marquette Branch Prison.

Statement of Claims:

Plaintiffs Claim that the Defendants violated the First and Eighth Amendments to the United States Constitution. By retaliating against these Plaintiffs for making Verbal Complaints, filing grievances, and for being involved in the Chippewa Incident of September 13, 2020. By authorizing and releasing Pepper Spray and tear gas in a Unit with Inmates who were Positive with the Covid-19 Virus, and then refused Health Care treatment. In disregard of Plaintiffs serious medical conditions:

Statement of Facts:

- 1) These claims stem from a early morning October 20, 2020 incident.
- 2) Emergency Response Team was attempting to remove an inmate from "C" Block Cell First -21.
- 3) As this inmate refused to be abstracted from the cell.
- 4) ERT, was called upon to use alternative force. (ie. Teargas, etc.)
- 5) Preceiving the events to unfold, Inmates locking on the Segregation side began to inquire as to the method of abstraction.
- 6) These Inmates, at all times relevant, Shall be referred to as the "Plaintiff" or "Plaintiffs" from time to time.

- 7) At all times relevant, these Plaintiffs were confirmed for having the Covid-19 Virus, by Health Care Personnel, before and during this instant incident.
- 8) Plaintiff - Thomas, Who at this time, locks in cell First-22. One cell over from this Inmate.
- 9) Plaintiff - Thomas informed the ERT, Who at this time, located in front of his cell equipped with A Camera and Chemical Agents, that he suffers from Asthma and is already experiencing Respiratory issues due to him battling Covid-19.
- 10) Plaintiff - Thomas then asked Custody Staff and the ERT to remove him before administering their Chemical Agents.
- 11) Plaintiff - Thomas's Concerns and request to be protected was ignored.

- 12) Around 2:00AM, on October 20, 2020, Custody Staff masked, and equipped with shields, attacked the Inmate in Cell First- 21 while he was asleep.
- 13) These masked Custody Staff, stormed the inmate's cell firing multiple rounds of tear gas and pepper spray.
- 14) This excessive amount of tear gas and Pepper Spray quickly saturated the cell area.
- 15) Being an open bar setting in "C" Block, this gas and spray advanced to the surrounding cells, like a cloud of poisonous gas.
- 16) To exasperate this situation, "C" Block utilizes a central ventilation system.
- 17) That being, if the poisonous fumes did not enter through the open bars,

The Poisonous Combination of tear gas and Pepper Spray would be Carried Via Ventilation.

- 18) Plaintiffs immediately started to Complain Of lack of air, and compound difficulty Of breathing.
- 19) One Plaintiff, Plaintiff- Williams immediately Started Choking and Vomiting.
- 20) Plaintiff- Williams Stated to Staff, "I'm having severe Chest pain, Please alert Medical."
- 21) Correctional Officer Unknown Binner, herein after Defendant- Binner.
- 22) Defendant- Binner looked up the Stairs and Stated, "You guys will be alright."
- 23) As the gas Spread from Cell to Cell.
- 24) Other inmates began to Choke and Vomit.

- 25) As cries for help increased.
- 26) Correctional Officers Unknown Lamentola, and Miller. Who Shall be referred to hereinafter as Defendant-Lamentola, and Defendant-Miller. (Defendant-Miller is an Officer From the Chippewa Facility, transferred to M.B.P.).
- 27) Defendant-Lamentola Stated, "you guys like Complaining, and writing grievances, Well there you go."
- 28) Another Plaintiff, Plaintiff-Dorsey, Stated, "I'm Asthmatic Please Contact Health Care, I'm having trouble breathing."
- 29) Defendant-Miller stated, "We turned on the Shower fan, You guys will be OKAY." "Just relax."
- 30) An Inmate, Plaintiff-Witherspoon, managed to assert himself above the hysteria and stated from behind the bars, "Please, anyone call Health Care, I'm Asthmatic. I'm having Chest pains and Shortness of breath."

- 31) Correctional Officer Unknown Vinder, Who Shall be referred to as Defendant-Vinder Stated, "You guys Should have thought about that before destroying Neebish Unit.*)
- 32) Inmate, Plaintiff- Kelly Chimed in and quickly stated, "I need medical attention, I have asthma, and I'm having additional Problems due to having the Covid-Virus."
- 33) Again, Defendant- Vinder Stated, "No, we are busy. If you guys are in need of health Care, than Perhaps You guys Shouldn't have destroyed Neebish Unit."
- 34) Plaintiff- Kelly Stated, "I'm a General Population Prisoner," "Plus, What does that have to do with health care."
- 35) Defendant- Vinder, Stated, "I don't know, You guys figure it out, like I Said, We are busy."

* Neebish Unit is at Chippewa Correctional Facility, a place of incident on September 13, 2020.

- 36) As Plaintiffs Continued to choke, and Vomit.
- 37) Defendants refused to either open the windows, or turn on a fan in order to dispel the chemicals.
- 38) As, an Inmate, Plaintiff - Taylor Stated, "The windows are right there, just open a window Please I'm having trouble breathing."
- 39) Defendant - Miller Stated, "You guys are okay, just lay down", "The more you cry, the worse it will get."
- 40) Inmate, Plaintiff - Thompkins Stated, "Why did you guys do that, You Could have pull him out without the gas and Pepper Spray." "You are punishing us all."
- 41) Defendant - Lamentola, Stated, "You guys Came as a Unit," "We will deal with you as a unit."

- 42) Defendant - Lamentola, further stated,
" You guys should think about that the
next time you destroy a Unit."
- 43) Later that morning, a Correctional
Officer Unknown Sgt. Whitlar, who shall
be referred to herein after as Defendant-
Whitlar, While making a "C" Block round.
- 44) Plaintiff - Williams stated to Defendant-
Whitlar, " Why didn't you guys just
move the inmates who were asthmatic."
- 45) Defendant - Whitlar stated, " We
followed all the protocols, You guys
will be fine."
- 46) Plaintiff - Williams Stated, " O.K., but
We are positive for Covid-19, this
attack has only made it worse."

- 47) Plaintiff - Williams further stated, "A lot of us need medical attention, Please alert them."
- 48) As the voices for help from the Inmates increased.
- 49) Defendant - Whitlar, walked off stating, "Just lay down, You guys will be fine."
- 50) As the morning carried on, with no help from staff, or medical.
- 51) During a round, another Correctional Officer Unknown Sgt. Bemister, who shall be referred to as Defendant - Bemister hereafter.
- 52) An Inmate, Plaintiff - Wallace stopped Defendant - Bemister and stated, "Why

did you make the call to tear gas and Pepper spray that cell." "Knowing that it would spread throughout a Unit of People that's Positive for Covid-19."

- 53) Defendant - Bemister Stated, "You guys will learn to follow the rules at this facility."
- 54) Plaintiff - Wallace Stated, "But you and your staff have violated the rules, by tear gassing a Unit of People who are sick with a respiratory virus, among other illnesses."
- 55) Defendant - Bemister Stated, "Well that is what grievances are for, have at it."
- 56) Plaintiff - Wallace Stated, "Just alert Health Care, as I'm having trouble

breathing, and chest pains from these chemicals."

- 57) Defendant- Bemister Stated, "If you guys need Health Care, Write a Kite to them." as Defendant- Bemister walked off.
- 58) Plaintiff- Dorsey, as well as other Plaintiffs, RECEiving no medical attention filed grievances, which received grievance identifier numbers: MBP/20111619. (see M.D.O.C's Grievance Tracking System for more Identifier Numbers on Grievances Filed by these Plaintiffs.)
- 59) Due in part by the chemical attack by these Defendants, Plaintiffs continue to struggle with the respiratory virus.
- 60) While Plaintiffs were still fighting this virus, Erica Huss, who is the Warden for the Marquette Branch Prison. And Shall be referred herein as Defendant - Huss.

- 61) Made rounds in "C" Block Segregation Side on October 24, 2020, just around (4) four days after this attack.
- 62) Inmates Stopped Defendant- Huss Regarding this assault with Chemical agents while Inmates were sick with the deadly Covid-19 Virus.
- 63) Defendant - Huss Stated, " You guys are Over reacting," " You guys must remember You wouldn't be here if you didn't destroy Neebish Unit."
- 64) Hearing the Statements of Defendant- Huss, Inmates began to Curse and Scream at Defendant- Huss.
- 65) Defendant - Huss stated, " I'm not Concerned with any of that, I'm only Concerned about keeping Staff, and finding Staff to work the prison."
- 66) Inmates Collectively stated, " Your Staff Sprayed Chemical agents in the air, and then refused to open any windows, or Provide

Us Medical treatment."

- 67) Defendant- Huss Stated, "I don't See anything wrong with their conduct," "What I do take issue with is you guys not following the rules."
- 68) After making a Semi-round, Defendant- Huss left the "C" Block Building.
- 69) On October 25, 2020, Defendant- Huss returned to "C" Block around 6-pm.
- 70) Inmates continued to press their Concerns of Chemical agents being used while everyone was positive with this deadly respiratory Virus.
- 71) Around 7-pm, during Defendant- Huss's round on October 25, 2020, Plaintiff- Witherspoon became unresponsive, while Defendant- Huss witnessed this event.
- 72) Plaintiff- Witherspoon was wheeled out of the Unit by Health Care, due to breathing complications after being exposed to the poisonous toxicants, and not receiving medical treatment.

- 73) Inmates again stated, this is what we are talking about.
- 74) Plaintiff - Thompkins stated, "See, this is happening right in front of your face." "Please set orders not to release chemical agents in this Unit, especially while we are battling Covid-19."
- 75) Defendant - Huss again stated, "I'm Only concerned with keeping Staff."
- 76) Defendant - Huss further stated "You guys need to think about what you did that lead you here."
- 77) Defendant - Huss completed her rounds and left the Unit.
- 78) Plaintiffs Claim that this was the last time Defendant - Huss made Segregation rounds in "C" Block.

CAUSE OF ACTION (I)

First Amendment Constitutional Violation

"Retaliation"

A) Protect Conduct:

79) Plaintiffs claim that Plaintiffs were engaged in protected conduct when making Verbal Complaints, and filing grievances as alleged and reincorporated by reference in Paragraphs # [5, 9-11, 18, 20, 25, 28, 30, 32, 34, 38, 40, 44, 46-48, 52, 54, 56, 58, 62, 64, 66, 70-74].

B) Adverse Action :

80) Plaintiffs Claim that Defendants took adverse actions against these Plaintiffs by either participating in the gassing and Pepper Spraying, or authorized the tear gassing and pepper spraying, and not Cleaning the cell to get rid of the Chemicals as alleged and reincorporated by reference in Paragraphs # [1-4, 12-13, 52-53].

C) Proximity :

81) Plaintiffs Claim that it could be inferred that because Plaintiffs were filing grievances, and making Verbal Complaints. That Defendants indirectly gassed and Pepper sprayed these Plaintiffs as alleged and reincorporated by reference in Paragraphs # [12-27, 37-42, 52-55, 58, 63, 65-67, 76].

CAUSE OF ACTION (II)

Eighth Amendment Constitutional Violation

"Deliberate Indifference"

Denial of Medical Treatment

A) Objective Component:

82) Plaintiffs Claim that both asthma and the Covid-19 Virus, are Serious and jointly are Particularly Serious as they both can have adverse effects on Plaintiffs respiratory System.

83) Plaintiffs Claim that both asthma, and the Covid-19 Virus, are well known to have damaging effects on a respiratory System, which cause difficulty with breathing along with other side effects.

B) Subjective Component:

84) Plaintiffs Claim that Defendants Knew or Should have Known that gassing and Pepper Spraying these Plaintiffs either directly or indirectly would Cause Serious medical Condition.

85) Plaintiffs Claim that Defendants Knew or Should have Known that Plaintiffs were Positive with Covid-19 Virus. Which is a Virus that attacks the respiratory system. Which makes it difficult to breathe and that gassing and Pepper Spraying a person who has asthma and Covid-19, would either trigger or compound a person's breathing Problems.

- 86) Plaintiffs Claim that Defendants Knew or Should have Known that these Plaintiffs had Covid-19. As it was indicated on a bright red Card outside of Plaintiffs Cell area. Coupled with the fact that Plaintiffs informed the Defendants Verbally before hand.
- 87) Plaintiffs Claim that Defendants disregarded these facts, and refused to alert health care of the breathing problems brought on by the gassing and Pepper spraying of these Plaintiffs.
- 88) Plaintiffs Claim that Defendants knew of these serious medical conditions, or perceive these conditions. But Still Chose not to alert health care upon requests.
- 89) Plaintiffs Claim that Defendants disregarded the fact that most of the Plaintiffs had asthma, as Plaintiffs told Defendants directly. And as this information was indicated on Medical Health Records inside the Unit.

Relief Requested

Wherefore, Plaintiffs respectfully requests that this Court enter judgment:

- 90) Granting All Plaintiffs named herein Compensatory damages from All Defendants, jointly and severally for Violating Plaintiffs' First Amendment rights in an amount in excess of \$25,000 each.
- 91) Granting All Plaintiffs punitive damages from All Defendants for Violating Plaintiffs' First Amendment rights in an amount in excess of \$25,000 each.
- 92) Granting All Plaintiffs named herein Compensatory damages from All Defendants, jointly and severally for Violating Plaintiffs' Eighth Amendment rights in an amount in excess of \$25,000 each.

- 93) Granting All Plaintiffs punitive damages from All Defendants for Violating Plaintiffs' Eighth Amendment Rights in an amount in excess of \$25,000 each.
- 94) A Jury Trial on all issues triable by a jury.
- 95) Plaintiffs Costs in this Suit.
- 96) Any relief this Court deems, just, Proper and equitable on All Plaintiffs behalf.

Date: 2/25/2021

(s) Norwood Witherspoon
Norwood Witherspoon
#484291

(s) Raymond Williams
Raymond Williams
#688523

(s) Devonte Dorsey
Devonte Dorsey
#967089

(s) Keith Thomas
Keith Thomas
#436056

(S) Michael Kelly

Michael Kelly
781124

(S) Detmetric Thompkins

Detmetric Thompkins
575337

(S) Jabari Regains

Jabari Regains
600539

(S) C. Taylor

Christopher Taylor
408375

(S) Taylen McCoy

Taylen McCoy
793044

(S) Larry M. Stovall

Larry Stovall
601852

(S) Antonio Taylor

Antonio Taylor
618544

(S) Anthony Wallace

Anthony Wallace
705595

(S) Oliver Webb IV

Oliver Webb IV
283528

Verification

We, the above listed Plaintiffs declare that the above statements are true and correct. Under the penalty of perjury pursuant to 28 U.S.C. § 1746.

See the above Signed Signatures

NORWOOD WITHERSPOON
INMATE NUMBER: 484291
MARQUETTE BRANCH PRISON
1960 U.S. Highway 41 South
Marquette, MI. 49855

UNITED
WESTERN
Office of
202 W.
P.O. Box
Marquette





STATES DISTRICT COURT
DISTRICT OF MICHIGAN
the Clerk
Washington St.
698
MI. 49855